

SENATE BILL REPORT

SB 5294

As Reported By Senate Committee On:
Judiciary, February 7, 2007

Title: An act relating to the considerations of corporate directors in exercising their duties.

Brief Description: Allowing corporate directors to consider the social, legal, economic, and environmental effects of their decisions.

Sponsors: Senators Spanel, Jacobsen, Fairley, Regala, Kline, Pridemore and Brandland.

Brief History:

Committee Activity: Judiciary: 1/23/07, 2/07/07 [DP, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Murray and Weinstein.

Minority Report: Do not pass.

Signed by Senator Carrell.

Staff: Juliana Roe (786-7405)

Background: Current law requires that corporate directors consider only the interests of the corporation and its shareholders when making decisions. Corporate directors are liable for any actions taken as directors that stem from information considered originating from sources other than the corporation or its shareholders, such as employees, customers, and the public. Proponents believe that expanding what directors are authorized to consider in order to make decisions would help further promote corporate social responsibility. At least 30 states, including Oregon, Idaho, Nevada, and Arizona, have adopted "constituency statutes."

Summary of Bill: Directors of a corporation are authorized to give, within the scope of their duties, due consideration to the social, legal, economic, and environmental effects of their decisions in order to determine what they believe to be in the best interest of the corporation and its shareholders.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill allows directors of a corporation to consider the social, legal, economic, and environmental effects of their decisions. This is not mandatory. Allowing the consideration of these issues may create better long term results for the corporation and the community. Thirty states have already adopted constituency statutes.

The bill does not state that corporate directors should ignore the wishes of the shareholders or the corporation, but rather, allows corporate directors to take a broader view of interests and the effects of their decisions. It also allows a more open debate. Corporate directors, under this bill, would still be liable for actions taken contrary to the statute, but would not be liable for simply looking outside the corporation and its shareholders for further insight or information.

CON: This bill will either do nothing to existing law or create ambiguity that would be best left alone. Washington corporate law is based on the American Bar Association's Revised Model Business Corporation Act, which does not include a constituency law. If this constituency bill is passed, corporations may choose to incorporate in Delaware, a state that does not have a constituency statute and has rejected constituency law, rather than here in Washington.

When there is no Washington common law with which to refer, persons turn to case law and Delaware law. The Delaware standard makes more sense than a constituency statute. It states that you can consider other constituencies, but only if the decision has rationally related benefits, or a general relationship to shareholder interests. Current law permits corporations to make charitable contributions if, in the long run, the benefits to the corporation will increase.

There is a seamy underside to this bill. The 30 states that adopted constituency statutes did so, for the most part, in the 1980s. These "anti-takeover" laws have caused the rates of the corporations within these jurisdictions to be down-graded. Furthermore, the bill does not require shareholder interests to be considered. The recent trend, in other states, has been to give more control to their boards with the intent that they make decisions in the best interests of the shareholders. This legislation gives corporations another reason to incorporate outside of Washington. Ultimately, lawyers from jurisdictions that have adopted constituency statutes have stated that the decision needs to be tied to the shareholders and that they generally look to the Delaware standard.

Persons Testifying: PRO: Senator Spanel, prime sponsor; Bill Daley, Washington Community Action Network.

CON: John Reed, Davis Wright Tremaine LLP, Corporate Act Revision Committee of the Washington State Bar Association's Business Law Section.